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Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Letter dated 29 November 2006 from the Permanent Representative of Spain to the United Nations addressed to the Secretary-General

Please find herewith a copy of the letter which I have today sent to the Chairman of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, concerning the consultation to be held in Gibraltar tomorrow, 30 November, on the new draft Constitution negotiated between the United Kingdom and representatives of the political parties in Gibraltar, explaining the position of the Spanish Government in this matter.

I should be grateful if you would circulate this letter and its annex as an official document of the sixty-first session of the General Assembly, under item 39 "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples".

(*Signed*) Juan Antonio **Yáñez-Barnuevo**
Permanent Representative of Spain to the United Nations

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Annex to the letter dated 29 November 2006 from the Permanent Representative of Spain to the United Nations addressed to the Secretary-General

As you are doubtless aware, the authorities of Gibraltar, a territory which has been included since 1946 in the United Nations list of Non-Self-Governing Territories, have arranged for a consultation to be held on 30 November 2006 on the draft Constitution negotiated between the United Kingdom and representatives of the political parties in Gibraltar.

I have the honour to inform you of the position of the Government of Spain concerning this referendum, and to place on record its position regarding the nature of the referendum and its alleged significance in connection with the process of decolonization of Gibraltar.

The referendum is a purely local initiative, which concerns only the authorities of Gibraltar. It is moreover of doubtful legality, being based on administrative rules used for the referendum of 7 November 2002. Moreover, under the legislation of the United Kingdom the Government of Gibraltar has no authority to organize consultations of this kind.

Even if the new draft Constitution of Gibraltar were to be supported by a majority of those voting in the referendum, this would not per se give it legal force, since the legal and political requirement of subsequent promulgation through a United Kingdom decree (Order in Council) would inevitably arise. As your Committee has stated on numerous occasions, the legal procedure entailed by such a method of promulgation is of a manifestly colonial kind.

Although the United Kingdom Government, according to an answer given on 4 July 2006 to a parliamentary question, recognizes the referendum as an exercise of a presumed right of self-determination of the Gibraltarian people, it has also stated that this right is constrained by article X of the Treaty of Utrecht — which gives Spain the right of refusal should the United Kingdom decide to renounce sovereignty over Gibraltar — and by the purposes and principles of the United Nations Charter. The United Kingdom has also affirmed that the new Constitution gives Gibraltar "greater control over its internal affairs" without diminishing British sovereignty over the territory.

For all these reasons, I have to state that, in the opinion of the Spanish Government, nobody can claim that either the referendum or the draft Constitution itself in any way affect the ongoing process of decolonization, since the decolonization of Gibraltar has to be achieved by means of negotiations between Spain and the United Kingdom, as the General Assembly has repeatedly asserted year after year. This position was again confirmed in October this year in the draft decision on the question of Gibraltar, which was approved by consensus in the Fourth Committee and is to be adopted by the General Assembly in plenary in December.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Juan Antonio **Yáñez-Barnuevo**
Permanent Representative of Spain to the United Nations